

## **Non-Income Taxpayer Project Cover Letter Of March 29, 2012**

Sheldon/Shirley - This correspondence is submitted on behalf of the American Council of Life Insurers, the American Insurance Association and the Property Casualty Insurers Association of America. ("the Trades"). The submission specifically deals with four aspects of the current Non-Income Taxpayer Project as outlined and discussed below.

- 1) It reiterates the insurance industry's strong belief that if this project is even necessary, the potential abusive use of an insurance company to evade taxes should be its focus. From the outset of this project the industry has made it clear that we believe the tax treatment of LLCs and partnerships owned by insurance companies cannot be separated from the rationale for and truly unique nature of the premium/retaliatory tax system imposed on the insurance industry. When viewed holistically as it should be, the insurance industry reasserts there is no issue of equity.
- 2) It provides feedback on an important aspect of the Executive Committee's discussion at last July's annual meeting that focused on whether tools already exist that can be used or enacted by states to address overcapitalized insurance companies/abuses.
- 3) As requested by the Executive Committee at the annual meeting last July, it provides revised draft model language aimed at addressing the potential abusive use of an insurance company to evade taxes.
- 4) It responds to the Uniformity Committee's February 10 request for additional analysis of potential retaliatory tax implications as a result of the project's current model language.

### **Project Focus**

During the last several Uniformity Committee calls, it became clear that a difference of opinion exists as to the focus of this project. The Uniformity Committee seems to feel the project should deal strictly with the question of equity. Or to put it another way, that the treatment under the corporate income tax system of the income of certain LLCs and partnerships in which an insurance company invests must somehow be the same as afforded a non-insurance company investor, notwithstanding that the insurance company is subject to a distinct state tax system.

However, the Trades have opined that the focus should be, not on this so-called "tax equity" issue, but rather on the potential abusive use of an insurance company to evade taxes. The Trades' position on these issues has been set forth in detail in its prior submissions. This submission, which responds to a specific request from the Uniformity Committee, is intended to supplement (but not supersede) these prior submissions.

The "Tax Equity" document and three (3) previously submitted documents ("May 16, 2011", "July 22, 2010" and "February 19, 2010" ) attached to this note provide detailed support for our position on this matter.

### **Existing Tools**

Perhaps the threshold question, as was raised during the last July's Executive Committee meeting, is whether sufficient tools already exist for states to effectively deal with any true tax abuses involving insurance companies, including the Uniformity Committee's misperceived matter of tax inequity. While we appreciate the MTC and the states are in a better position to address that question, the Trades believe the states have sufficient tools to address such abuses, so that this project is not necessary .

The "Existing Tools" document attached to this note provides an overview of various tools that are currently available to states.

### **Revised Draft Model Language**

If the Executive Committee decides to move forward with any model, the Trades believe the revised draft "Model Language" document attached to this note includes language that could be used – in a focused and targeted manner – to complement current law authorities.

### **Retaliatory Tax Analysis**

The Trades have consistently indicated that the MTC's current version of the non-income taxpayer model language would carry real and substantial risks of triggering state retaliatory taxation. This concern has been echoed in all of the expert, third party input received by the MTC, including Professor Richard Pomp, representatives of the insurance regulatory community representing both the National Association of Insurance Commissioners (NAIC) and the Pennsylvania Insurance Department, and the Trades themselves.

The "Retaliatory Taxes" document supplements the industry's prior submissions on these retaliatory tax concerns. In addition, the "NAIC Survey" document provides a 50 state overview of retaliatory tax laws which was assembled for the Uniformity Committee by the NAIC. Both of these documents are also attached to this note.

### **Conclusion**

We believe this submission coupled with prior submissions address the questions posed and responds to the requests made by the MTC staff, Uniformity Committee and the Executive Committee to date. We also strongly believe tax equity is not at issue here. Instead, if a new model bill is needed at all, the focus should be on any abusive use of an insurance company.

Thank you and your team again for the time and effort devoted to this matter. And please feel free to contact us with any additional questions.